



March 21, 2007

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## ENGROSSED SENATE BILL No. 534

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DIGEST OF SB 534 (Updated March 20, 2007 10:26 am - DI 107)

**Citations Affected:** IC 31-17; IC 31-19; IC 31-35; IC 34-24; IC 35-46; noncode.

**Synopsis:** Various family law matters. Provides that: (1) proceedings for voluntary termination of parent-child relationships and adoptions are not governed by the uniform child custody jurisdiction law; (2) certain adoption notices are valid regardless of whether the notice is served within or outside Indiana; (3) adoption notices served on a putative father who is not a resident of Indiana are valid if certain conditions are met; (4) a parent who has given valid consent to the termination of the parent-child relationship may waive certain notice requirements; (5) certain notices of adoption proceedings shall be served by publication in the same manner that a summons is served by publication; and (6) if a prospective adoptive parent suffers a pecuniary  
(Continued next page)

**Effective:** July 1, 2007.

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**Lubbers, Miller, Broden**  
(HOUSE SPONSORS — KUZMAN, FRIZZELL)

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January 23, 2007, read first time and referred to Committee on Judiciary.  
February 19, 2007, amended, reported favorably — Do Pass.  
February 26, 2007, read second time, ordered engrossed. Engrossed.  
February 27, 2007, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

March 6, 2007, read first time and referred to Committee on Judiciary.  
March 20, 2007, amended, reported — Do Pass.

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ES 534—LS 7255/DI 110+



loss as a result of a violation of adoption deception, the prospective parent may bring a civil action against the person who benefits from the adoption related expenses. Allows a petition for adoption to be amended to substitute another petitioner under certain circumstances. Requires that if a parent has given written consent, been advised concerning a voluntary termination of the parent-child relationship, and appears in court, the court may consider only whether the consent for the termination of the parent-child relationship was voluntary. Changes the period within which a putative father may register with the putative father registry to be entitled to notice of an adoption. Makes it a Class A misdemeanor to publish an advertisement in a telephone directory: (1) that a child is offered or wanted for adoption; or (2) to place or locate a child for adoption; unless the advertisement is placed by an attorney or a licensed child placing agency and certain other requirements are met.

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March 21, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 534

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 31-17-3-2, AS AMENDED BY P.L.68-2005,  
2 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2007]: Sec. 2. As used in this chapter:

4 (1) "contestant" means a person, including a parent, who claims  
5 a right to custody or parenting time rights with respect to a child;

6 (2) "custody determination" means a court decision and court  
7 orders and instructions providing for the custody of a child,  
8 including parenting time rights; it does not include a decision  
9 relating to child support or any other monetary obligation of any  
10 person;

11 (3) "custody proceeding" includes proceedings in which a custody  
12 determination is one of several issues, such as an action for  
13 dissolution of marriage, but does not include child in need of  
14 services, **voluntary termination of a parent-child relationship,**  
15 **or adoption** proceedings;

16 (4) "decree" or "custody decree" means a custody determination  
17 contained in a judicial decree or order made in a custody

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proceeding, and includes an initial decree and a modification decree;

(5) "home state" means the state in which the child, immediately preceding the time involved, lived with the child's parents, a parent, or a person acting as parent, for at least six (6) consecutive months, and in the case of a child less than six (6) months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six (6) month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

SECTION 2. IC 31-19-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) A resident of Indiana who seeks to adopt a child less than eighteen (18) years of age may, by attorney of record, file a petition for adoption with the clerk of the court having probate jurisdiction in the county in which:

(1) the petitioner for adoption resides;

(2) a licensed child placing agency or governmental agency having custody of the child is located; or

(3) the child resides.

(b) The county in which the petition for adoption may be filed is a matter of venue and not jurisdiction.

**(c) Subject to IC 31-19-9-3, if an individual who files a petition for adoption of a child:**

**(1) decides not to adopt the child; or**

**(2) is unable to adopt the child;**

**the petition for adoption may be amended or a second petition may be filed in the same action to substitute another individual who intends to adopt the child as the petitioner for adoption. The amended petition or second petition under this subsection relates back to the date of the original petition.**

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SECTION 3. IC 31-19-2.5-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5. A notice served in accordance with IC 31-19-4 or IC 31-19-4.5 is valid regardless of whether the notice is served within or outside Indiana.**

SECTION 4. IC 31-19-3-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 9. (a) A notice served in accordance with this chapter on a putative father who is a resident of Indiana is valid regardless of whether the notice is served within or outside Indiana.**

**(b) A notice served in accordance with this chapter outside Indiana on a putative father who is not a resident of Indiana is valid if the child was conceived:**

**(1) in Indiana; or**

**(2) outside Indiana, if the laws of the state in which the:**

**(A) father:**

**(i) is served notice; or**

**(ii) resides; or**

**(B) child was conceived;**

**allows a paternity or similar action to be filed before the birth of a child.**

SECTION 5. IC 31-19-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3. (a) If:**

**(1) the mother of a child:**

**(A) informs an attorney or agency arranging the child's adoption, on or before the date the child's mother executes a consent to the child's adoption, that the child was conceived outside Indiana; and**

**(B) does not disclose to the attorney or agency the name or address, or both, of the putative father of the child; and**

**(2) the putative father of the child has:**

**(A) failed or refused to consent to the adoption of the child or has not had the parent-child relationship terminated under IC 31-35 (or IC 31-6-5 before its repeal); and**

**(B) not registered with the putative father registry under IC 31-19-5 within the period under IC 31-19-5-12;**

**the attorney or agency shall serve notice of the adoption proceedings on the putative father by publication in the same manner as a summons is served by publication under Rule 4.13 of the Indiana Rules of Trial Procedure.**

**(b) The only circumstance under which notice to the putative father must be given by publication under Rule 4.13 of the Indiana Rules of**

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1 Trial Procedure is when the child was conceived outside of Indiana as  
2 described in subsection (a).

3 SECTION 6. IC 31-19-4-7 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. If a putative father  
5 is entitled to notice under section 1, 2, or 3 of this chapter, upon:

6 (1) providing service of process in ~~compliance with the same~~  
7 **manner as a summons and complaint are served under** Rule  
8 4.1 of the Indiana Rules of Trial Procedure for notice under  
9 section 1 or 2 of this chapter; or

10 (2) publication in ~~compliance with the same manner as a~~  
11 **summons is served by publication under** Rule 4.13 of the  
12 Indiana Rules of Trial Procedure for notice under section 3 of this  
13 chapter;

14 no further efforts to give notice to the putative father are necessary,  
15 regardless of whether the putative father actually receives the notice.

16 SECTION 7. IC 31-19-4.5-1 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. This chapter:

18 (1) shall not be construed to affect notice of an adoption provided  
19 to a putative father under IC 31-19-4; and

20 (2) applies to a ~~putative~~ father who has abandoned, failed to  
21 support, or failed to communicate with a child.

22 SECTION 8. IC 31-19-4.5-2 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. Except as provided  
24 in IC 31-19-2.5-4, if a petition for adoption alleges that consent to  
25 adoption is not required under IC 31-19-9-8, notice of the adoption  
26 must be given to the person from whom consent is allegedly not  
27 required under IC 31-19-9-8. Notice shall be given: ~~under:~~

28 (1) **in the same manner as a summons and complaint are**  
29 **served under** Rule 4.1 of the Indiana Rules of Trial Procedure if  
30 the person's name and address are known; ~~and or~~

31 (2) **in the same manner as a summons is served by publication**  
32 **under** Rule 4.13 of the Indiana Rules of Trial Procedure if the  
33 name or address of the person is not known;

34 to a petitioner for adoption.

35 SECTION 9. IC 31-19-5-12 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) To be entitled  
37 to notice of an adoption under IC 31-19-3 or IC 31-19-4, a putative  
38 father must register with the state department of health under section  
39 5 of this chapter not later than:

40 (1) thirty (30) days after the child's birth; or

41 (2) the **earlier of the** date of the filing of a petition for the:

42 (A) child's adoption; or

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1                   **(B) termination of the parent-child relationship between**  
 2                   **the child and the child's mother;**

3                   whichever occurs later.

4                   (b) A putative father may register under subsection (a) before the  
 5                   child's birth.

6                   SECTION 10. IC 31-19-9-3 IS AMENDED TO READ AS  
 7                   FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. **(a)** A consent to  
 8                   adoption that does not name or otherwise identify a petitioner for  
 9                   adoption is valid if the consent to adoption contains a statement, by the  
 10                  person consenting to adoption, that the person consenting to adoption  
 11                  voluntarily executed the consent to adoption without disclosure of the  
 12                  name or other identification of the petitioner for adoption.

13                  **(b) A petitioner may be substituted under IC 31-19-2-2 if:**

14                  **(1) the consent to adoption executed by a child's mother**  
 15                  **contains a statement, by the mother consenting to adoption,**  
 16                  **that the mother voluntarily agrees that a petitioner for the**  
 17                  **adoption may be substituted without additional consent from**  
 18                  **the mother; or**

19                  **(2) the mother executes a written consent to the substitution**  
 20                  **of a petitioner for the adoption.**

21                  **The mother's consent under this subsection is not conditional**  
 22                  **regardless of whether the mother consents or does not consent to**  
 23                  **the substitution of petitioners under this subsection.**

24                  SECTION 11. IC 31-19-10-3 IS AMENDED TO READ AS  
 25                  FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) A consent to  
 26                  adoption may be withdrawn not later than thirty (30) days after consent  
 27                  to adoption is signed if:

28                  (1) the court finds, after notice and opportunity to be heard  
 29                  afforded to the petitioner for adoption, that the person seeking the  
 30                  withdrawal is acting in the best interest of the person sought to be  
 31                  adopted; and

32                  (2) the court orders the withdrawal.

33                  (b) A consent to adoption may not be withdrawn after:

34                  (1) thirty (30) days after the consent to adoption is signed;

35                  (2) the person who signs the consent to adoption appears, **in**  
 36                  **person or by telephonic communications or video**  
 37                  **conferencing**, before a court in which the petition for adoption  
 38                  has been or will be filed **and acknowledges that the person:**

39                  **(A) understood the consequences of the signing of the**  
 40                  **consent to adoption;**

41                  **(B) freely and voluntarily signed the consent to adoption;**  
 42                  **and**

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1 (C) believes that adoption is in the best interests of the  
 2 person to be adopted; or  
 3 (3) the person who signs the consent to adoption appears, in  
 4 person or by telephonic communications or video  
 5 conferencing, before a court of competent jurisdiction if the  
 6 parent is outside of Indiana and acknowledges that the person:  
 7 (A) understood the consequences of the signing of the consent  
 8 to adoption;  
 9 (B) freely and voluntarily signed the consent to adoption; and  
 10 (C) believes that adoption is in the best interests of the person  
 11 to be adopted;  
 12 whichever occurs first.

13 (c) If a hearing under this section is conducted by telephonic  
 14 communication or video conferencing, the court shall ensure that  
 15 the hearing is recorded.

16 SECTION 12. IC 31-35-1-4 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) If requested by  
 18 the parents:

19 (1) the county office of family and children; or  
 20 (2) a licensed child placing agency;  
 21 may sign and file a verified petition with the juvenile or probate court  
 22 for the voluntary termination of the parent-child relationship.

23 (b) The petition must:  
 24 (1) be entitled "In the Matter of the Termination of the  
 25 Parent-Child Relationship of \_\_\_\_\_, a child, and  
 26 \_\_\_\_\_, the child's parent (or parents)"; and  
 27 (2) allege that:  
 28 (A) the parents are the child's natural or adoptive parents;  
 29 (B) the parents, including the alleged or adjudicated father if  
 30 the child was born out of wedlock:  
 31 (i) knowingly and voluntarily consent to the termination of  
 32 the parent-child relationship; or  
 33 (ii) are not required to consent to the termination of the  
 34 parent-child relationship under section ~~6(b)~~ 6(c) of this  
 35 chapter;  
 36 (C) termination is in the child's best interest; and  
 37 (D) the petitioner has developed a satisfactory plan of care and  
 38 treatment for the child.

39 SECTION 13. IC 31-35-1-5 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) **Except as**  
 41 **provided in subsection (b),** the parents shall be notified of the hearing  
 42 in accordance with IC 31-32-9.

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(b) A parent who has made a valid consent to the termination of a parent-child relationship may waive the notice required by subsection (a) if the waiver:

(1) is in writing either:

(A) in the parent's consent to terminate the parent-child relationship; or

(B) in a separate document;

(2) is signed by the parent in the presence of a notary public; and

(3) contains an acknowledgment that:

(A) the waiver is irrevocable; and

(B) the parent will not receive notice of:

(i) adoption; or

(ii) termination of parent-child relationship; proceedings.

SECTION 14. IC 31-35-1-6, AS AMENDED BY P.L.130-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Except as provided in subsection ~~(b)~~, (c), the parents must give their consent in open court unless the court makes findings of fact upon the record that:

(1) the parents gave their consent in writing before a person authorized by law to take acknowledgments; and

(2) the parents were:

(A) advised in accordance with section 12 of this chapter; and

(B) advised that if they choose to appear in open court, the only issue before the court is whether their consent was voluntary.

~~(3)~~ the parents failed to appear.

(b) If:

(1) the court finds the conditions under subsection (a)(1) and (a)(2) have been met; and

(2) a parent appears in open court;

a court may consider only the issue of whether the parent's consent was voluntary.

~~(b)~~ (c) The consent of a parent to the termination of the parent-child relationship under this chapter is not required if:

(1) consent to the termination of the parent-child relationship is implied under section 4.5 of this chapter, if the parent is the putative father;

(2) the parent's consent to the adoption of the child would not be required under:

(A) IC 31-19-9-8;

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- 1 (B) IC 31-19-9-9; or
- 2 (C) IC 31-19-9-10; or
- 3 (3) the child's biological father denies paternity of the child before
- 4 or after the birth of the child if the denial of paternity:
- 5 (A) is in writing;
- 6 (B) is signed by the child's father in the presence of a notary
- 7 public; and
- 8 (C) contains an acknowledgment that:
- 9 (i) the denial of paternity is irrevocable; and
- 10 (ii) the child's father will not receive notice of adoption or
- 11 termination of parent-child relationship proceedings.
- 12 A child's father who denies paternity of the child under subdivision (3)
- 13 may not challenge or contest the child's adoption or termination of the
- 14 parent-child relationship.
- 15 SECTION 15. IC 31-35-1-12, AS AMENDED BY P.L.68-2005,
- 16 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 17 JULY 1, 2007]: Sec. 12. For purposes of sections 6 and 8 of this
- 18 chapter, the parents must be advised that:
- 19 (1) their consent is permanent and cannot be revoked or set aside
- 20 unless it was obtained by fraud or duress or unless the parent is
- 21 incompetent;
- 22 (2) when the court terminates the parent-child relationship:
- 23 (A) all rights, powers, privileges, immunities, duties, and
- 24 obligations, including any rights to custody, control, parenting
- 25 time, or support pertaining to the relationship, are permanently
- 26 terminated; and
- 27 (B) their consent to the child's adoption is not required;
- 28 (3) the parents have a right to the:
- 29 (A) care;
- 30 (B) custody; and
- 31 (C) control;
- 32 of their child as long as the parents fulfill their parental
- 33 obligations;
- 34 (4) the parents have a right to a judicial determination of any
- 35 alleged failure to fulfill their parental obligations in a proceeding
- 36 to adjudicate their child a delinquent child or a child in need of
- 37 services;
- 38 (5) the parents have a right to assistance in fulfilling their parental
- 39 obligations after a court has determined that the parents are not
- 40 doing so;
- 41 (6) proceedings to terminate the parent-child relationship against
- 42 the will of the parents can be initiated only after:

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(A) the child has been adjudicated a delinquent child or a child in need of services and removed from their custody following the adjudication; or

(B) a parent has been convicted and imprisoned for an offense listed in IC 31-35-3-4 (or has been convicted and imprisoned for an offense listed in IC 31-6-5-4.2(a) before its repeal), the child has been removed from the custody of the parents under a dispositional decree, and the child has been removed from the custody of the parents for six (6) months under a court order;

(7) the parents are entitled to representation by counsel, provided by the state if necessary, throughout any proceedings to terminate the parent-child relationship against the will of the parents; and

(8) the parents will receive notice of the hearing, **unless notice is waived under section 5(b) of this chapter**, at which the court will decide if their consent was voluntary, and the parents may appear at the hearing and allege that the consent was not voluntary.

SECTION 16. IC 34-24-3-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. (a) If a prospective adoptive parent suffers pecuniary loss as a result of a violation of IC 35-46-1-9.5, the prospective adoptive parent may bring a civil action against a person who benefits from adoption related expenses in violation of IC 35-46-1-9.5, even if the person has not been prosecuted or convicted of the offense under IC 35-46-1-9.5. In an action under this subsection, a prospective adoptive parent may seek an award of the following:**

**(1) Actual damages caused by the violation if the prospective adoptive parent has not been awarded damages under IC 35-46-1-9.5.**

**(2) An amount not to exceed three (3) times the amount of actual damages of the prospective adoptive parent suffering the loss.**

**(3) The costs of the action.**

**(4) A reasonable attorney's fee.**

**(b) A prospective adoptive parent may bring a civil action against a person who commits unauthorized adoption facilitation under IC 35-46-1-22, even if the person has not been prosecuted or convicted of the offense under IC 35-46-1-22. In an action under this subsection, a prospective adoptive parent may seek an award of the following:**

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**(1) An amount not to exceed three (3) times the amount that the prospective adoptive parent paid for the adoption services provided to the prospective adoptive parent in the commission of unauthorized adoption facilitation under IC 35-46-1-22.**

**(2) The costs of the action.**

**(3) A reasonable attorney's fee.**

SECTION 17. IC 34-24-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. It is not a defense to an action for punitive damages that the defendant is subject to criminal prosecution for the act or omission that gave rise to the civil action. However, a person may not recover both:

(1) punitive damages; and

(2) the amounts provided for under section 1 **or 1.5** of this chapter.

SECTION 18. IC 35-46-1-9, AS AMENDED BY P.L.145-2006, SECTION 371, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) Except as provided in subsection (b), a person who, with respect to an adoption, transfers or receives any property in connection with the waiver of parental rights, the termination of parental rights, the consent to adoption, or the petition for adoption commits profiting from an adoption, a Class D felony.

(b) This section does not apply to the transfer or receipt of:

(1) reasonable attorney's fees;

(2) hospital and medical expenses concerning childbirth and pregnancy incurred by the adopted person's birth mother;

(3) reasonable charges and fees levied by a child placing agency licensed under IC 31-27 or by a county office or the department of child services;

(4) reasonable expenses for psychological counseling relating to adoption incurred by the adopted person's birth parents;

(5) reasonable costs of housing, utilities, and phone service for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth;

(6) reasonable costs of maternity clothing for the adopted person's birth mother;

(7) reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption;

(8) any additional itemized necessary living expenses for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth, not listed in subdivisions (5) through (7) in an amount not to exceed

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1 one thousand dollars (\$1,000); or  
 2 (9) other charges and fees approved by the court supervising the  
 3 adoption, including reimbursement of not more than actual wages  
 4 lost as a result of the inability of the adopted person's birth mother  
 5 to work at her regular, existing employment due to a medical  
 6 condition, excluding a psychological condition, if:

7 (A) the attending physician of the adopted person's birth  
 8 mother has ordered or recommended that the adopted person's  
 9 birth mother discontinue her employment; and

10 (B) the medical condition and its direct relationship to the  
 11 pregnancy of the adopted person's birth mother are  
 12 documented by her attending physician.

13 In determining the amount of reimbursable lost wages, if any, that are  
 14 reasonably payable to the adopted person's birth mother under  
 15 subdivision (9), the court shall offset against the reimbursable lost  
 16 wages any amounts paid to the adopted person's birth mother under  
 17 subdivisions (5) and (8) and any unemployment compensation received  
 18 by or owed to the adopted person's birth mother.

19 (c) Except as provided in this subsection, payments made under  
 20 subsection (b)(5) through (b)(9) may not exceed three thousand dollars  
 21 (\$3,000) and must be disclosed to the court supervising the adoption.  
 22 The amounts paid under subsection (b)(5) through (b)(9) may exceed  
 23 three thousand dollars (\$3,000) to the extent that a court in Indiana  
 24 with jurisdiction over the child who is the subject of the adoption  
 25 approves the expenses after determining that:

26 (1) the expenses are not being offered as an inducement to  
 27 proceed with an adoption; and

28 (2) failure to make the payments may seriously jeopardize the  
 29 health of either the child or the mother of the child and the direct  
 30 relationship is documented by a licensed social worker or the  
 31 attending physician.

32 **(d) The payment limitation under subsection (c) applies to the**  
 33 **total amount paid under subsection (b)(5) through (b)(9) in**  
 34 **connection with an adoption from all prospective adoptive parents,**  
 35 **attorneys, and licensed child placing agencies.**

36 ~~(d)~~ (e) An attorney or licensed child placing agency shall inform a  
 37 birth mother of the penalties for committing adoption deception under  
 38 section 9.5 of this chapter before the attorney or agency transfers a  
 39 payment for adoption related expenses under subsection (b) in relation  
 40 to the birth mother.

41 ~~(e)~~ (f) The limitations in this section apply regardless of the state or  
 42 country in which the adoption is finalized.

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SECTION 19. IC 35-46-1-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9.5. A person who is a birth mother, or a woman who holds herself out to be a birth mother, and who knowingly or intentionally benefits from adoption related expenses paid:

(1) when the person knows or should have known that the person is not pregnant;

(2) by or on behalf of a prospective adoptive parent who is unaware that at the same time another prospective adoptive parent is also ~~incurring~~ **paying** adoption related expenses described under section 9(b) of this chapter in an effort to adopt the same child; or

(3) when the person does not intend to make an adoptive placement;

commits adoption deception, a Class A misdemeanor. In addition to any other penalty imposed under this section, a court may order the person who commits adoption deception to make restitution to a prospective adoptive parent, attorney, or licensed child placing agency that incurs an expense as a result of the offense.

SECTION 20. IC 35-46-1-21 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 21. (a) Only a person that is an attorney licensed to practice law or a child placing agency licensed under the laws of any state or the District of Columbia may advertise, on the person's own behalf, in a telephone directory that:**

**(1) a child is offered or wanted for adoption; or**

**(2) the person is able to place, locate, or receive a child for adoption.**

**(b) A person that publishes a telephone directory that is distributed in Indiana may publish an advertisement described in subsection (a) in the telephone directory only if the advertisement contains the following:**

**(1) For an attorney licensed to practice law, the person's attorney number.**

**(2) For a child placing agency licensed under the laws of any state or the District of Columbia, the number on the person's child placing agency license.**

**(c) A person who knowingly or intentionally violates this section commits unauthorized adoption advertising, a Class A misdemeanor.**

SECTION 21. IC 35-46-1-22 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2007]: Sec. 22. (a) As used in this section, "adoption services" means at least one (1) of the following services that is provided for compensation, an item of value, or reimbursement, either directly or indirectly, and provided either before or after the services are rendered:

- (1) Arranging for the placement of a child.
- (2) Identifying a child for adoption.
- (3) Matching adoptive parents with biological parents.
- (4) Arranging or facilitating an adoption.
- (5) Taking or acknowledging consents or surrenders for termination of parental rights for adoption purposes.
- (6) Performing background studies on:
  - (A) a child who is going to be adopted; or
  - (B) adoptive parents.
- (7) Making determinations concerning the best interests of a child and the appropriateness in placing the child for adoption.
- (8) Post-placement monitoring of a child before the child is adopted.

(b) As used in this section, the term "adoption services" does not include the following:

- (1) Legal services provided by an attorney licensed in Indiana.
- (2) Adoption related services provided by a governmental entity or a person appointed to perform an investigation by the court.
- (3) General education and training on adoption issues.
- (4) Post-adoption services, including supportive services to families to promote the well-being of members of adoptive families or birth families.

(c) This section does not apply to the following persons:

- (1) The department of child services, an agency or person authorized to act on behalf of the department of child services, or a similar agency in another state.
- (2) The division of family resources, an agency or person authorized to act on behalf of the division of family resources, or a similar agency in another state.
- (3) A county office of family and children in Indiana or a similar county office in another state.
- (4) A child placing agency licensed under the laws of Indiana or another state.
- (5) An attorney licensed to practice law in Indiana or another state.

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1           **(6) A prospective biological parent or adoptive parent acting**  
 2           **on the individual's own behalf.**

3           **(d) A person who knowingly or intentionally provides, engages**  
 4           **in, or facilitates adoption services to a birth parent or prospective**  
 5           **adoptive parent who resides in Indiana commits unauthorized**  
 6           **adoption facilitation, a Class A misdemeanor.**

7           **SECTION 22. [EFFECTIVE JULY 1, 2007] IC 35-46-1-21 and**  
 8           **IC 35-46-1-22, both as added by this act, apply only to crimes**  
 9           **committed after June 30, 2007.**

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SENATE MOTION

Madam President: I move that Senator Miller be added as second author of Senate Bill 534.

LUBBERS

SENATE MOTION

Madam President: I move that Senator Broden be added as coauthor of Senate Bill 534.

LUBBERS

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 534, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 42, delete "if the" and insert "**if:**".

Page 4, line 1, before "consent" begin a new line block indented and insert:

**"(1) the".**

Page 4, line 4, delete "." and insert "; **or**

**(2) the mother executes a written consent to the substitution of a petitioner for the adoption."**

Page 4, line 4, beginning with "The" begin a new line blocked left.

Page 4, line 22, delete ";" and insert "**and acknowledges that the person:**

**(A) understood the consequences of the signing of the consent to adoption;**

**(B) freely and voluntarily signed the consent to adoption; and**

**(C) believes that adoption is in the best interests of the person to be adopted;"**

Page 4, between lines 32 and 33, begin a new paragraph and insert:

**"(c) If a hearing under this section is conducted by telephonic communication or video conferencing, the court shall ensure that the hearing is recorded."**

Page 7, between lines 35 and 36, begin a new paragraph and insert:

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"SECTION 12. IC 34-24-3-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. A prospective adoptive parent may bring a civil action against a person who commits unauthorized adoption facilitation under IC 35-46-1-22, even if the person has not been prosecuted or convicted of the offense under IC 35-46-1-22. In an action under this section, a prospective adoptive parent may seek an award of the following:**

- (1) An amount not to exceed three (3) times the amount that the prospective adoptive parent paid for the adoption services provided to the prospective adoptive parent in the commission of unauthorized adoption facilitation under IC 35-46-1-22.**
- (2) The costs of the action.**
- (3) A reasonable attorney's fee.**

SECTION 13. IC 34-24-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3. It is not a defense to an action for punitive damages that the defendant is subject to criminal prosecution for the act or omission that gave rise to the civil action. However, a person may not recover both:**

- (1) punitive damages; and**
- (2) the amounts provided for under section 1 or 1.5 of this chapter."**

Page 7, line 38, delete "This section does not apply" and insert **"Only a person that is an attorney licensed to practice law or a child placing agency licensed under the laws of any state or the District of Columbia may advertise, on the person's own behalf, in a telephone directory that:**

- (1) a child is offered or wanted for adoption; or**
- (2) the person is able to place, locate, or receive a child for adoption.**

**(b) A person that publishes a telephone directory that is distributed in Indiana may publish an advertisement described in subsection (a) in the telephone directory only if the advertisement contains the following:**

- (1) For an attorney licensed to practice law, the person's attorney number.**
- (2) For a child placing agency licensed under the laws of any state or the District of Columbia, the number on the person's child placing agency license.**

**(c) A person who knowingly or intentionally violates this section commits unauthorized adoption advertising, a Class A misdemeanor."**

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Page 7, delete lines 39 through 42.

Page 8, delete lines 1 through 25.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 534 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

# COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 534, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 21 and 22, begin a new paragraph and insert:

"SECTION 5. IC 31-19-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) If:

(1) the mother of a child:

(A) informs an attorney or agency arranging the child's adoption, on or before the date the child's mother executes a consent to the child's adoption, that the child was conceived outside Indiana; and

(B) does not disclose to the attorney or agency the name or address, or both, of the putative father of the child; and

(2) the putative father of the child has:

(A) failed or refused to consent to the adoption of the child or has not had the parent-child relationship terminated under IC 31-35 (or IC 31-6-5 before its repeal); and

(B) not registered with the putative father registry under IC 31-19-5 within the period under IC 31-19-5-12;

the attorney or agency shall serve notice of the adoption proceedings on the putative father by publication **in the same manner as a summons is served by publication** under Rule 4.13 of the Indiana Rules of Trial Procedure.

(b) The only circumstance under which notice to the putative father must be given by publication under Rule 4.13 of the Indiana Rules of Trial Procedure is when the child was conceived outside of Indiana as described in subsection (a).

SECTION 6. IC 31-19-4-7 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. If a putative father is entitled to notice under section 1, 2, or 3 of this chapter, upon:

- (1) providing service of process in ~~compliance with the same~~ **manner as a summons and complaint are served under** Rule 4.1 of the Indiana Rules of Trial Procedure for notice under section 1 or 2 of this chapter; or
- (2) publication in ~~compliance with the same manner as a~~ **summons is served by publication under** Rule 4.13 of the Indiana Rules of Trial Procedure for notice under section 3 of this chapter;

no further efforts to give notice to the putative father are necessary, regardless of whether the putative father actually receives the notice.

SECTION 7. IC 31-19-4.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. This chapter:

- (1) shall not be construed to affect notice of an adoption provided to a putative father under IC 31-19-4; and
- (2) applies to a ~~putative~~ father who has abandoned, failed to support, or failed to communicate with a child.

SECTION 8. IC 31-19-4.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. Except as provided in IC 31-19-2.5-4, if a petition for adoption alleges that consent to adoption is not required under IC 31-19-9-8, notice of the adoption must be given to the person from whom consent is allegedly not required under IC 31-19-9-8. Notice shall be given: ~~under:~~

- (1) **in the same manner as a summons and complaint are served under** Rule 4.1 of the Indiana Rules of Trial Procedure if the person's name and address are known; ~~and or~~
- (2) **in the same manner as a summons is served by publication under** Rule 4.13 of the Indiana Rules of Trial Procedure if the name or address of the person is not known;

to a petitioner for adoption."

Page 8, line 8, after "Sec. 1.5." insert "(a) **If a prospective adoptive parent suffers pecuniary loss as a result of a violation of IC 35-46-1-9.5, the prospective adoptive parent may bring a civil action against a person who benefits from adoption related expenses in violation of IC 35-46-1-9.5, even if the person has not been prosecuted or convicted of the offense under IC 35-46-1-9.5. In an action under this subsection, a prospective adoptive parent may seek an award of the following:**

- (1) **Actual damages caused by the violation if the prospective adoptive parent has not been awarded damages under IC 35-46-1-9.5.**

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**(2) An amount not to exceed three (3) times the amount of actual damages of the prospective adoptive parent suffering the loss.**

**(3) The costs of the action.**

**(4) A reasonable attorney's fee.**

**(b)".**

Page 8, line 12, delete "section," and insert "**subsection,**".

Page 8, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 18. IC 35-46-1-9, AS AMENDED BY P.L.145-2006, SECTION 371, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) Except as provided in subsection (b), a person who, with respect to an adoption, transfers or receives any property in connection with the waiver of parental rights, the termination of parental rights, the consent to adoption, or the petition for adoption commits profiting from an adoption, a Class D felony.

(b) This section does not apply to the transfer or receipt of:

- (1) reasonable attorney's fees;
- (2) hospital and medical expenses concerning childbirth and pregnancy incurred by the adopted person's birth mother;
- (3) reasonable charges and fees levied by a child placing agency licensed under IC 31-27 or by a county office or the department of child services;
- (4) reasonable expenses for psychological counseling relating to adoption incurred by the adopted person's birth parents;
- (5) reasonable costs of housing, utilities, and phone service for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth;
- (6) reasonable costs of maternity clothing for the adopted person's birth mother;
- (7) reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption;
- (8) any additional itemized necessary living expenses for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth, not listed in subdivisions (5) through (7) in an amount not to exceed one thousand dollars (\$1,000); or
- (9) other charges and fees approved by the court supervising the adoption, including reimbursement of not more than actual wages lost as a result of the inability of the adopted person's birth mother to work at her regular, existing employment due to a medical condition, excluding a psychological condition, if:

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- (A) the attending physician of the adopted person's birth mother has ordered or recommended that the adopted person's birth mother discontinue her employment; and
- (B) the medical condition and its direct relationship to the pregnancy of the adopted person's birth mother are documented by her attending physician.

In determining the amount of reimbursable lost wages, if any, that are reasonably payable to the adopted person's birth mother under subdivision (9), the court shall offset against the reimbursable lost wages any amounts paid to the adopted person's birth mother under subdivisions (5) and (8) and any unemployment compensation received by or owed to the adopted person's birth mother.

(c) Except as provided in this subsection, payments made under subsection (b)(5) through (b)(9) may not exceed three thousand dollars (\$3,000) and must be disclosed to the court supervising the adoption. The amounts paid under subsection (b)(5) through (b)(9) may exceed three thousand dollars (\$3,000) to the extent that a court in Indiana with jurisdiction over the child who is the subject of the adoption approves the expenses after determining that:

- (1) the expenses are not being offered as an inducement to proceed with an adoption; and
- (2) failure to make the payments may seriously jeopardize the health of either the child or the mother of the child and the direct relationship is documented by a licensed social worker or the attending physician.

**(d) The payment limitation under subsection (c) applies to the total amount paid under subsection (b)(5) through (b)(9) in connection with an adoption from all prospective adoptive parents, attorneys, and licensed child placing agencies.**

~~(d)~~ (e) An attorney or licensed child placing agency shall inform a birth mother of the penalties for committing adoption deception under section 9.5 of this chapter before the attorney or agency transfers a payment for adoption related expenses under subsection (b) in relation to the birth mother.

~~(e)~~ (f) The limitations in this section apply regardless of the state or country in which the adoption is finalized.

SECTION 19. IC 35-46-1-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9.5. A person who is a birth mother, or a woman who holds herself out to be a birth mother, and who knowingly or intentionally benefits from adoption related expenses paid:

- (1) when the person knows or should have known that the person

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is not pregnant;

(2) by or on behalf of a prospective adoptive parent who is unaware that at the same time another prospective adoptive parent is also ~~incurring~~ **paying** adoption related expenses described under section 9(b) of this chapter in an effort to adopt the same child; or

(3) when the person does not intend to make an adoptive placement;

commits adoption deception, a Class A misdemeanor. In addition to any other penalty imposed under this section, a court may order the person who commits adoption deception to make restitution to a prospective adoptive parent, attorney, or licensed child placing agency that incurs an expense as a result of the offense."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 534 as printed February 20, 2007.)

LAWSON L, Chair

Committee Vote: yeas 9, nays 0.

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